

Appl. No. 10/664,560

Docket No. 9364

Reply dated September 20, 2010

Reply to Office Action mailed on August 5, 2010

Customer No. 27752

REMARKS

Claim Status

Claims 1, 2, 10-12, 14, and 15 are pending in the present application. No additional claims fee is believed to be due.

Rejection Under 35 USC §103(a) Over U.S. Patent No. 3,960,272
and U.S. Patent No. 3,912,571

Claims 1, 2, 10-12, 14, and 15 are rejected by the Examiner under 35 USC §103(a) as allegedly being unpatentable over U.S. Patent No. 3,960,272 to Hartbauer, et al. ("Hartbauer") and U.S. Patent No. 3,912,571 Hartbauer, et al. ("Hartbauer") (collectively referred to as "Hartbauer"). The Examiner asserts that Hartbauer in Figs. 11-14 teaches a rolled multi-ply product having a tail portion, wherein a fold is formed in the tail portion that constitutes a tail end for grasping by a consumer. The Examiner further asserts that the change in location of the consumer accessible tab within the same general location as the prior art tab and performing the same function as the prior art tab constitutes no more than an unpatentable rearrangement of parts. MPEP 2144.04.

Applicants respectfully disagree with the Examiner's position that the claimed invention is merely a rearrangement of parts in the prior art. Applicants submit that MPEP 2144.04 also states that "The mere fact that a worker in the art could rearrange the parts of the reference device to meet the terms of the claims on appeal is not itself sufficient to support a finding of obviousness. The prior art must provide a motivation or reason for the worker in the art, without the benefit of appellant's specification, to make the necessary changes in the reference device." *Ex parte Chicago Rawhide Mfg. Co.*, 223 USPQ 351, 353 (Bd. Pat. App. & Inter. 1984). Applicants submit that Hartbauer provides no motivation or reason to rearrange its parts to arrive at the claimed invention. Hartbauer teaches a manually graspable fold in its product. Applicants submit that Hartbauer's fold cannot be properly rearranged to arrive at the claimed invention. Further, Applicants submit that there has been a long felt, unmet need, even in the light of Hartbauer, which have been in the art for over 34 years, for the claimed invention. Applicants submit that the claimed invention addresses and solves this long felt, unmet need. Accordingly, Applicants submit that Claim 1 is not rendered obvious over Hartbauer. MPEP 2143.03. Further, Applicants submit that Claims 2, 10-12, and 14-15,

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which ultimately depend from Claim 1, are not rendered obvious over Hartbauer. MPEP 2143.03.

Rejection Under 35 USC §103(a) Over U.S. Patent Nos. 3,960,272 and 3,912,571 and further in view of U.S. Patent No. 6,924,042

Claims 1-2, 10-12, and 14-15 are rejected by the Examiner under 35 USC §103(a) as allegedly defining obvious subject matter over Hartbauer, discussed above, and further in view of U.S. Patent No. 6,924,042 to Von Paleske ("Von Paleske").

Applicants respectfully submit that Hartbauer in view of Von Paleske fails to teach each and every element of Claim 1, the independent claim, because Hartbauer's parts of its product including its graspable fold cannot properly be rearranged to produce the claimed invention. Applicants further submit that Von Paleske's teachings fail to overcome the deficiencies of Hartbauer and the long felt, unmet need discussed above, which the claimed invention addresses and fills. Accordingly, Applicants submit that Claim 1 is not rendered obvious over Hartbauer in view of Von Paleske. MPEP 2143.03. Further, Applicants submit that Claims 2, 10-12, and 14-15, which ultimately depend from Claim 1, are not rendered obvious over Hartbauer in view of Von Paleske. MPEP 2143.03.

Conclusion

This response represents an earnest effort to place the present application in proper form and to distinguish the invention as claimed from the applied reference(s). In view of the foregoing, reconsideration of this application, and allowance of the pending claim(s) are respectfully requested.

Respectfully submitted,

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